CURRENT DECISIONS

AGENCY—ESTOPPEL—ACTIONS EX DELICTO.—The plaintiff was injured by an automobile owned and driven by A. The plaintiff sued B as employer of A. The evidence showed that B had sold out to C, who retained the seller's name and location. The lower court allowed the plaintiff to recover on the ground of estoppel. *Held,* that such recovery was error. *Jung v. New Orleans Ry. & Light Co.* (1919, La.) 82 So. 870.

As pointed out by the court, estoppel is applied where persons have acted in good faith in reliance upon representations and have changed their position so that a denial of the facts as represented would cause them loss. In an action *ex delicto* this doctrine cannot be applied to hold one "liable" for the acts of another who appears to be his agent, because the plaintiff cannot say he would have acted differently had he known otherwise. To do so would be to admit contributory negligence. The authorities are not uniform; the well-reasoned doctrine of the instant case is obviously the sounder one.

AGENCY—EXCLUSIVE PRIVILEGE TO SELL.—The plaintiff and the defendant executed a contract by which the plaintiff was to aid in making sales of land bought by the defendant from the plaintiff for $1 per acre commission. The plaintiff had shown such land to prospects furnished by the defendant, but the sale was made not to them, but to other parties with whom the plaintiff had not negotiated. The plaintiff sued for the commission of $1 per acre. *Held,* that he could not recover. *Alley v. Griffin* (1919, Tex. Civ. App.) 215 S. W. 479.

The court denied recovery on the theory that an "exclusive agency" does not prohibit the owner himself from selling without incurring the duty to pay the agent commissions on such sales. This doctrine is reviewed in COMMENT (1919) 28 YALE LAW JOURNAL, 575. As to the sufficiency of the consideration in exclusive agency contracts, see (1919) 29 *ibid.,* 115.

CARRIERS—GOVERNMENT ADMINISTRATION—FUEL ORDERS.—The plaintiff was the consignee of a shipment of horses transported by the defendant. During the transmission the horses were so handled that several died after delivery and the remainder were emaciated. In a suit for damages the defendant claimed that it was under government control and hence not liable. *Held,* that this was no defence. *Clapp v. American Express Co.* (1919, Mass.) 125 N. E. 162.

This holding is in harmony with what seems to be the weight of authority. *Cf. Witherspoon & Sons v. Postal Telegraph Co.* (1919, E. D. La.) 257 Fed. 758; (1918) 28 YALE LAW JOURNAL, 199; (1919) *ibid.,* 714, 830.

CONSTITUTIONAL LAW—DUE PROCESS—DAMAGES UPON TERMINATION OF A FRANCHISE.—A canal company in 1839 obtained the power of eminent domain to condemn land for canal purposes provided that it should, at all times when safe to open the locks, permit all boats, etc., of proprietors of abutting lands to pass through the canal. Such proprietors had previously had access to deep water through creeks and streams destroyed by the canal. In 1916 the canal company obtained permission from the legislature to abandon its franchise so far as necessary to permit a railroad to bridge the canal; it then granted the railroad the privilege of building a bridge shutting off passage through the canal at that point. The plaintiffs, proprietors of adjoining land, sued for an injunction against the canal company and the railroad. *Held,* that the petition disclosed no cause of action since the privilege of passing terminated

with the abandonment of the franchise by the consent of the legislature. *Johnson v. Lake Drummond Canal & Water Co.* (1919, Va.) 99 S. E. 771.

See COMMENTS, *supra*, p. 431.

CONSTITUTIONAL LAW—WAR POWERS—PROHIBITION.—The plaintiff sued for an injunction against the United States Attorney and the Collector of Internal Revenue enforcing against him the penalties provided in the War Time Prohibition Act as amended by the Volstead Act. The plaintiff was manufacturing beer containing more than 0.5 and less than 2.75 *per cent.* of alcohol. The plaintiff contended that the question of this beverage being intoxicating was issuable, that Congress could not probihit the making of non-intoxicating liquors, and that the prohibition could not without compensation be extended to liquor acquired before the passage of the act. *Held,* that a dismissal of the petition was correct; the vital point being that "there was no appropriation of private property, but merely a lessening of value due to a permissible restriction imposed upon its use." *Ruppert v. Caffey* (Jan. 5, 1920) U. S. Sup. Ct. Oct. Term 1919, No. 603.

For discussion of this and the companion cases, see COMMENTS, *supra*, p. 437.

CONSTITUTIONAL LAW—WAR POWERS—WAR TIME PROHIBITION AND NON-INTOXICATING LIQUORS.—The defendant was indicted for using food products in the manufacture for beverage purposes of beer containing one-half of one *per cent.* of alcohol, in violation of the War Time Prohibition Act and the President's Proclamations thereunder. The Act was directed against "beer, wine *or other intoxicating malt or vinous liquors.*" *Held,* that a demurrer to the indictment was properly sustained. *United States v. Standard Brewery* (Jan. 5, 1920) U. S. Sup. Ct. Oct. Term 1919, No. 458.

The court stressed the words *or other intoxicating;* declared its inability to rule as matter of law that beverages containing not more than one-half of one *per cent.* of alcohol were intoxicating; declined to pass on the power of Congress to prohibit non-intoxicating liquors; and distinguished Internal Revenue Department rulings as classifications for purposes of taxation which could not enlarge criminal liability under Acts of Congress. See further COMMENTS, *supra*, p. 437.

CONTRACTS—OFFER AND ACCEPTANCE—SILENCE OF OFFEREE AS ACCEPTANCE.—On March 26, 1917, the defendant's traveling salesman solicited and received at the plaintiff's country store a written order for 50 barrels of meal, the order expressly stating that the salesman had no power to make a contract and that the order should not be binding until accepted by the defendant at its own office. The meal was to be ordered out by the plaintiff by July 31, or storage was to be charged thereafter. The salesman continued to make weekly calls upon the plaintiff, but nothing was said by either party as to this order, until May 26, when the plaintiff ordered the meal to be shipped. The defendant at once said that it had not accepted the order. In the meantime war had been declared and prices had risen. *Held,* that the defendant's silence for two months was unreasonable and that it operated as an acceptance of the order. *Cole-McIntyre-Norfleet Co. v. Holloway* (1919, Tenn.) 214 S. W. 817.

See COMMENTS, *supra*, p. 441.

COURTS—JURISDICTION—ORIGINAL JURISDICTION OF UNITED STATES SUPREME COURT.—The complainant, a citizen of New Jersey, asked leave to file an original bill against certain United States officers and against the State of New Jersey for an injunction against the enforcement of the Eighteenth Amendment or legislation under it, on the ground that the amendment was void. *Held,*